IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.6136 of 2004

Between:

Kaipu Kondareddy, S/o Subbareddy,
R/o Morampally, Banjar, Burgampad Mandal, Khammam District.

..... PETITIONER

AND

1 Agent to Government, Khammam.
2 Agency Divisional Officer, Paloncha, Khammam District.
3 Mandal Revenue Officer, Burgampad, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to for the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon'ble Court may be pleased to call for the records in CMA No.16 of 2002 on the file of the 1st respondent herein and to issue an appropriate Writ order or direction more particularly in the nature of Certiorari to quash the orders in CMA 16 of 2002 dated 28.11.2003 passed by the agent to Government, Khammam confirming the orders in LTR case No.H/154/95/BPD dated 17-10-2000 passed by the Agency Divisional Officer, Paloncha, Khammam District as are illegal, without jurisdiction and violative of principles of natural justice and to direct the respondents not to disturb the possession of the petitioner from the land in Sy.No.431/1 extent of Acs.3.00 situated in Morampalli Banjar, Burgampad Mandal, Khammam District.

Counsel for the Petitioner: MR.R.KAMESWAR RAO

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court made the following:

ORDER:

The second respondent herein by order dated 17.10.2000 in LTR Case No.H/154/95/BPD ordered ejection of the petitioner herein, as the petitioner was allegedly in possession of the property admeasuring Acs.3.00 in Survey No.431/1 of Morampalli Banjar village, Burgampad Mandal, Khammam District in contravention of Section 3(2) of A.P. Scheduled Areas Land Transfer Regulation, 1959 (hereafter called the Regulation) as amended by Regulation 1 of 1970. Be it noted, the said case was taken up *suo motu* by the second respondent. However, one Syed Asrar, a non-tribal was shown as a petitioner in the said case.

Aggrieved by the proceedings of the second respondent, the petitioner preferred an appeal before the first respondent under Section 3(3)(ii) of the Regulation. By impugned order dated 28.11.2003 in C.M.A.No.16 of 2002, the first respondent dismissed the appeal.

On the ground that the petitioner before the second respondent, Syed Asrar, left the village and his whereabouts are not known, the petitioner herein did not array him as a party respondent though any order that might be passed would have effect on him. This is a serious lacuna in the writ petition, because it is now axiomatic that in the absence of necessary party who would likely be affected by the orders passed by the Court, *ex parte* orders cannot be granted. Be that as it is, the second respondent, the original authority and the first respondent, the appellate authority recorded a finding that in the relevant revenue records/pahanis, the petitioner herein is shown to have come into possession of the land after 03.02.1970 and therefore, his possession is illegal. Whether the petitioner could be able to get over the finding of fact itself requires adducing of evidence especially documentary evidence by production of certified copies of records and appreciation thereof. It is purely a question of fact as to whether the petitioner came into possession of the land in question prior to the Regulation coming into force or after that, which would decide the legalities or otherwise of the occupation of the petitioner. This Court, therefore, is not inclined to go into the question especially when the petitioner has effective remedy by way of revision under Section 6 of the Regulation.

This Court while admitting the writ petition on 01.04.2004 ordered *status quo* with reference to the possession of the property in Acs.3.00 in Survey No.431/1 of Morampalli Banjar village, Burgampad Mandal, Khammam District. The said *status quo* order shall continue for a period of three weeks from today. The petitioner is given liberty to file revision before the Government of Andhra Pradesh within a period of two weeks and obtain appropriate interim orders from the Government. As and when the petitioner files the regular revision and moves an application for appropriate interim orders, the same shall be considered and disposed of by the Government expeditiously.

The writ petition, with the above observations and directions, is disposed of. There shall be no order as to costs.

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(**V.V.S.RAO,J**)

July 15, 2005.

NOTE:

Issue order copy

by 18.7.2005

(B/o)

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To

1 The Agent to Government, Khammam.
2 The Agency Divisional Officer, Paloncha, Khammam District.
3 The Mandal Revenue Officer, Burgampad, Khammam District.

4 Two CCs to the Government Pleader for Social Welfare,

High Court Buildings, Hyderabad. (OUT)

5 Two C.D. Copies.